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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,061	11/27/2001	Max Schaldach	7163-32	3174

21324 7590 10/24/2006
HAHN LOESER & PARKS, LLP
One GOJO Plaza
Suite 300
AKRON, OH 44311-1076

EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/996,061	Applicant(s) SCHALDACH ET AL.	
	Examiner Michael Thaler	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-52 is/are pending in the application.
- 4a) Of the above claim(s) 7,9-13,35-40 and 42-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,14-17,21-34,41,51 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 15, 2006 has been entered.

Claims 1, 2, 5, 6, 25, 29 and 30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Turi (5,556,414). Turi, in figures 1-7, discloses a stent 26 (Vein 26 may be considered to be a stent since it is inserted into a blood vessel and inherently aids in supporting the vessel due to its inherent stiffness.) for a vessel (col. 1, lines 40-42) comprising a tubular body 26 for expansion from a first condition to a second condition (col. 8, lines 1-5) wherein in the first condition, the stent being configured such that a first part of the stent is disposed radially inwardly relative to a second part of the stent (The vein 26, prior to being compressed about catheter 72, has a diameter which is equal to or greater than the diameter of the body passageway into which it is inserted as indicated from col. 4, line 59 to col. 5, line 7. When the vein 26 is

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compressed about catheter 72, it collapses and forms folds 27 as indicated in col. 7, lines 21-26 since, unlike member 22, it is not split along its longitudinal axis. In other words, when member 22 collapses, it does not form folds since loops 62 and 64 can overlap to accommodate its reduction in diameter as indicated in col. 6, line 62 to col. 7, line 1. However, when vein 26 collapses, it has no similar loops 62 or 64 and therefore must form folds 27 in the circumferential direction to accommodate its reduction in diameter. One of these folds is the claimed first part of the stent.) and wherein in the second condition, at least a portion of the first part changes its position relative to the second part from its position in the condition such that the at least portion of the first part is not disposed radially inwardly relative to a second part of the stent (when the vein unfolds into a cylindrical configuration), wherein the stent consists essentially of human or animal tissue. Alternatively, it would have been obvious that the tissue of the stent 26 has adequate elasticity since it expands with the cylindrical member 22 and since veins are elastic to some extent. As to claims 6 and 30, Turi, discloses hardening agent (the portion of the adhesive described in col. 5, lines 49-52 which hardens the adhesive as it cures or dries).

Claims 4, 8, 22, 23, 27, 32, 34 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turi (5,556,414) for the reasons set forth on page 4 of the Office Action mailed June 28, 2006.

Claims 3, 21, 24, 26, 28, 31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turi (5,556,414) in view of Atala (2003/0208279) for the reasons set forth on pages 4 and 5 of the Office Action mailed June 28, 2006.

Claims 14-17, 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turi (5,556,414) in view of Berg et al. (5,680,873) for the reasons set forth on pages 5 and 6 of the Office Action mailed June 28, 2006.

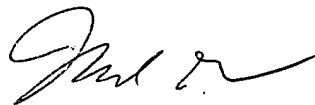
Applicant's arguments filed August 15, 2006 have been fully considered but they are not persuasive. Member 26 may be considered to be a stent for the reasons set forth above. Although stent 26 is inserted inside another stent 22, the claims do not preclude this. Stent 26 consists essentially of human or animal tissue.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht



MICHAEL THALER
PRIMARY EXAMINER
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